

STATE OF OHIO                     )  
  )ss:  
COUNTY OF LORAIN            )

IN THE COURT OF APPEALS  
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C.A. No.       14CA010595

Appellee

v.

RICHARD BURROUGHS

APPEAL FROM JUDGMENT  
ENTERED IN THE  
COURT OF COMMON PLEAS  
COUNTY OF LORAIN, OHIO  
CASE No.     13CR088511

Appellant

DECISION AND JOURNAL ENTRY

Dated: March 14, 2016

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CARR, Presiding Judge.

{¶1} Appellant, Richard Burroughs, appeals his convictions by the Lorain County Court of Common Pleas. This Court affirms.

I.

{¶2} Elyria Police arrested Mr. Burroughs on suspicion of drug-related activity on November 13, 2013. On January 13, 2014, a parole holder was placed on Mr. Burroughs due to an alleged violation of the terms of postrelease control. Mr. Burroughs moved the trial court to reduce his bond on February 3, 2014. The trial court granted the motion on February 20, 2014, and trial was set for February 27, 2014. On the day of trial, Mr. Burroughs moved to dismiss the indictment, alleging that his right to a speedy trial had been violated. The trial court denied the motion, and Mr. Burroughs pled no contest to the charges. The trial court found him guilty of six counts of trafficking in drugs in violation of R.C. 2925.03(A) and three counts of possession of drugs in violation of R.C. 2925.11(A), all of which were felonies. The trial court also found

Mr. Burroughs guilty of a minor misdemeanor count of possession of drugs and of a drug paraphernalia offense, which is a fourth degree misdemeanor. The trial court sentenced Mr. Burroughs to a total prison term of six years and ordered him to pay a \$100 fine. Mr. Burroughs appealed. We have rearranged his two assignments of error for ease of disposition.

## II.

### **ASSIGNMENT OF ERROR II**

THE TRIAL COURT ERRED WHEN IT FOUND THAT THE STATE HAD ESTABLISHED THAT DEFENDANT WAS SUBJECT TO A VALID PAROLE HOLDER.

{¶3} Mr. Burroughs’ second assignment of error argues that the trial court erred when it denied his motion to dismiss because the trial court incorrectly determined that he was held subject to a valid parole holder as of January 13, 2014.

{¶4} When a trial court denies a motion to dismiss on speedy trial grounds, this Court reviews questions of law de novo, but considers whether the trial court’s factual determinations are clearly erroneous. *State v. Downing*, 9th Dist. Summit No. 22012, 2004-Ohio-5952, ¶ 36. Under R.C. 2945.71(C)(2), a person charged with a felony must be brought to trial within 270 days of arrest. Each day that an accused is held in jail in lieu of posting bail counts as three days. R.C. 2945.71(E). R.C. 2945.72(A), however, provides that the timeframe within which someone accused of a crime may be brought to trial may be extended by “[a]ny period during which the accused is unavailable for hearing or trial, by reason of other criminal proceedings against him[.]” Thus, the “triple-count” provision does not apply during any period of time when an accused is also subject to a valid holder pursuant to another charge. *State v. Brown*, 64 Ohio St.3d 476, 479 (1992). The same holds true when an accused is subject to a holder because of a violation of postrelease control. *State v. McCallister*, 4th Dist. Scioto No. 13CA3558, 2014-

Ohio-2041, ¶ 16. *See generally State v. Vazquez*, 11th Dist. Ashtabula No. 2006-A-0073, 2007-Ohio-2433.

{¶5} Mr. Burroughs argues that the triple-count provision should apply to the entire length of his confinement because when he was sentenced in the 2007 Cuyahoga County case that resulted in his postrelease control obligation, the trial court did not comply with the notification requirements imposed by R.C. 2967.28. Mr. Burroughs reasons that as a result, the portion of his sentence that imposed postrelease control was void, and any holder that later issued for an alleged violation was invalid. The Eleventh District Court of Appeals rejected the same argument in *Vazquez*, noting that “the issue of whether [a defendant’s] imprisonment for violating post release control in another legal proceeding was void or illegal \* \* \* is not determinative of the present appeal. The determinative question in this case is whether the speedy trial period continued to run during that confinement.” *Id.* at ¶ 31. The Eleventh District reasoned that it is the “fact of an offender’s confinement” on another charge, without respect to the underlying merits, that matters for purpose of the speedy trial calculation. *Id.* at ¶ 32. The Court rejected *Vazquez*’s argument, noting the undue burden that it would place on the State:

The validity of the confinement, while perhaps of great importance in the proceedings which are the cause of the confinement, are of no importance to a prosecution whose proceedings are disrupted by that confinement. Moreover, it would often be impossible for the courts, defendants, and prosecutors to evaluate the merits of potential speedy trial violations, where the merits are dependent on the outcome of other, unrelated proceedings. In the present case, for example, the State has no reason to doubt the legality of *Vazquez*’ confinement until *Vazquez* raised the issue in his motion to dismiss.

*Id.* *See also State v. Henderson*, 5th Dist. Ashland No. 11-COA-045, 2012-Ohio-2709, ¶ 19-43.

{¶6} We agree with the reasoning in *Vazquez*. Assuming for purposes of his argument that the Cuyahoga County Court of Common Pleas did not properly impose postrelease control upon Mr. Burroughs in case number CR-07-496450, it is the fact of his confinement pursuant to

the holder that is significant for purposes of the speedy trial deadline. We decline to require the State to inquire into the substantive merits of underlying convictions when evaluating a holder for purposes of calculating a defendant's speedy trial time. Accordingly, we reject Mr. Burroughs' argument and conclude that the triple-count provision did not apply to his confinement after January 13, 2014. Mr. Burroughs' second assignment of error is overruled.

### **ASSIGNMENT OF ERROR I**

THE TRIAL COURT VIOLATED [MR. BURROUGHS'] RIGHT TO A SPEEDY TRIAL WHEN HE WAS NOT BROUGHT TO TRIAL WITHIN TWO HUNDRED AND SEVENTY DAYS AND WITHOUT ANY TOLLING EVENTS.

{¶7} Mr. Burroughs' first assignment of error is premised on the argument set forth in his second. In other words, this assignment of error presumes that the triple-count provision applied throughout Mr. Burroughs' confinement, calculates his speedy trial time accordingly, and argues that the trial court erred by determining that his speedy trial time was tolled for the entire period that his motion to reduce bond was pending.

{¶8} As we concluded with respect to Mr. Burroughs' second assignment of error, the trial court did not err by concluding that the triple-count provision ceased to apply as of January 13, 2014, when Mr. Burroughs was also confined pursuant to a postrelease control holder. Mr. Burroughs was arrested on November 13, 2013. From his arrest until January 14, 2014, when the holder was placed, 62 days elapsed. These days were subject to the triple-count provision and, therefore, count as 186 days for purposes of R.C. 2945.71(E). From January 14, 2014, until February 27, 2014, when Mr. Burroughs moved to dismiss the charges, 44 days elapsed, but those days are counted only once. A motion to dismiss filed by the defendant tolls the time calculation under R.C. 2945.72(E). Thus, from Mr. Burroughs' arrest until the speedy trial time tolled by the filing of his motion to dismiss, 230 days elapsed.

{¶9} The triple-count provision did not apply from January 14, 2014, to February 27, 2014, and the State was well within the time for bringing Mr. Burroughs to trial. Mr. Burroughs' argument that the trial court unduly delayed in ruling on his motion to reduce bond is, therefore, of no consequence with respect to the speedy trial calculation. His first assignment of error is overruled.

### III.

{¶10} Mr. Burroughs' assignments of error are overruled. The judgment of the Lorain County Court of Common Pleas is affirmed.

Judgment affirmed.

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There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Lorain, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(C). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

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DONNA J. CARR  
FOR THE COURT

MOORE, J.  
SCHAFFER, J.  
CONCUR.

APPEARANCES:

MICHAEL E. STEPANIK and CHARLES J. WILKINS, Attorneys at Law, for Appellant.

DENNIS P. WILL, Prosecuting Attorney, and MARY R. SLANCZKA, Assistant Prosecuting Attorney, for Appellee.